



J. Ashley Cooper

Partner

Telephone: 843.727.2674

Direct Fax: 843.727.2680

ashleycooper@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

February 5, 2020

Via Electronic Filing and First-Class Mail

Jo Anne Wessinger Hill
Hearing Officer
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, SC 29211

**Re: Refusal by Ganymede Solar, LLC to Comply with Applicable Rules and Regulations and Request for Extension - Ganymede Solar, LLC v. Dominion Energy South Carolina, Inc.
Docket No. 2019-390-E**

Dear Ms. Hill:

I am writing on behalf of Dominion Energy South Carolina, Inc. ("DESC") to alert the Public Service Commission of South Carolina (the "Commission") of certain tactics utilized by Ganymede Solar, LLC ("Ganymede") in the above-referenced docket that (i) are in clear violation of the Commission's rules and regulations and (ii) will likely delay the Commission's consideration of these matters in accordance with the schedule established by the Commission in the above-referenced docket (the "Commission's Schedule").

Specifically, Ganymede filed a Petition and Motion to Maintain Status Quo in this docket on December 20, 2019, and DESC was named as Respondent¹ in each filing. As such, the Commission's Schedule established (i) a hearing date of March 18, 2020, and (ii) corresponding deadlines for pre-filed testimony based upon such hearing date. In order to meet DESC's obligation to produce testimony in accordance with the Commission's Schedule, DESC filed *Dominion Energy South Carolina, Inc.'s First Set of Discovery Requests* (the "Discovery Requests"), on January 17, 2020, in the above-referenced docket.

¹ Indeed, the Commission has ruled that where a Petitioner seeks relief under an interconnection agreement pursuant to a Motion to Maintain Status Quo, DESC should be "a party to the docket without having to intervene in it." *Request of Beulah Solar, LLC for Modification of Interconnection Agreement with South Carolina Electric & Gas Company*, 2019 WL 202765, at *1 (S.C.P.S.C. 2019).

As a party of record, DESC is entitled to serve the Discovery Requests in accordance with S.C. Code Ann. Regs. § 103-833, S.C. Code Ann. Regs. § 103-835, and Rule 36 of the South Carolina Rules of Civil Procedure.

Despite these clear rules and regulations, Ganymede protested the submission of the Discovery Requests by filing (i) *Ganymede Solar, LLC's Objections/Responses to Company's First Set of Discovery Requests* (the "Objections"), and (ii) *Motion for Protective Order* (the "Motion"), in each case, on February 4, 2020, in the above-referenced docket. In conjunction, the Objections and Motion argue that the Discovery Requests are "moot," "inappropriate," and "serve no legitimate discovery purpose." Objections at 1; Motion at 2. As a result, Ganymede did not adequately respond to the Discovery Requests² and improperly requests the Commission toll "any requirement that Ganymede respond to [the] Discovery Requests." Motion at 3.

A keystone of Ganymede's support for the blanket refusal to adequately respond is that the Discovery Requests are inappropriate because "Ganymede is not seeking relief from [DESC]." Motion at 1. This logic is untenable. For example, DESC refers to the recent docket in which this Commission addressed, among other things, DESC's avoided costs methodology—Docket No. 2019-184-E. Therein, DESC sought neither relief nor approval from any party but the Commission. Yet, multiple third-parties were permitted to serve discovery upon DESC. According to Ganymede's logic, not only should discovery have been prohibited in that docket, but it should also be prohibited in every other docket in which another party is named but in which relief is sought from the Commission. Indeed, neither parties nor the Commission would be privy to the information obtained through the routine discovery process and the overall adjudicative process would be severely hindered—surely an illogical outcome.

As a result of Ganymede's clear violation of applicable rules and regulations of this Commission, DESC submitted a Deficiency Letter (the "Letter") to Ganymede earlier today. The Letter advised Ganymede of its clear violation of Commission rules and regulations, along with corresponding consequences that have been imposed in South Carolina for similar abuses of the discovery process. These consequences range from recovery of expenses (including attorneys' fees),³ to the imposition of sanctions.⁴

The Letter further advised Ganymede of language from this Commission that acknowledged that Motions to Compel Discovery are appropriate in these situations.⁵ As such,

² The Objections contain 19 numbered paragraphs objecting to each and every Interrogatory, Request for Production, and Request for Admission set forth in the Discovery Requests.

³ South Carolina courts have awarded expenses (including attorneys' fees) for abuses of the discovery process pursuant to Rule 37 and Rule 11 of the SCRPC. See, e.g., *Runyon v. Wright*, 471 S.E.2d 160 (S.C. 1996); *Ball v. Canadian American Exp. Co., Inc.*, 442 S.E.2d 620 (S.C. App. 1994).

⁴ South Carolina courts have held that sanctions may be appropriate where a party files a "pleading, motion, or other paper in bad faith (i.e., to cause unnecessary delay) whether or not there is good ground to support it." *Runyon v. Wright*, 471 S.E.2d 160, 162 (S.C. 1996) (emphasis added).

⁵ The Commission has expressly declared that "Motions to Compel before the Commission are properly brought in instances where a party upon whom discovery requests . . . are served fails or refuses to comply with the discovery requests without proper grounds for objection." *IN RE: Petition of the Office of Regulatory Staff to Establish Generic Proceeding Pursuant to the Distributed Energy Resource Program Act*, 2018 WL 488937, at *1 (S.C.P.S.C. 2018) (emphasis added).

please be advised that if the deficiencies in Ganymede's responses to the Discovery Requests are not remedied within three business days of the date hereof, DESC plans to pursue the appropriate relief under the Commission's rules and regulations and South Carolina law—which may include filing a Motion to Compel Discovery. DESC is hopeful that such a filing will be unnecessary and, given such clear violations of Commission rules and regulations, Ganymede will promptly remedy its deficient responses to the Discovery Requests.

However, given the lack of any adequate discovery responses from Ganymede, and the diversion of efforts required to respond to the Objections and the Motion, DESC hereby respectfully requests that the Commission extend DESC's deadline to submit its direct testimony by five days from the later of (i) February 19, 2020 (the current deadline) and (ii) the date upon which Ganymede submits adequate discovery responses in accordance with this Commission's rules and regulations. Otherwise, DESC will be further unfairly disadvantaged by Ganymede's unilateral refusal to comply with the Commission's Schedule and the Commission's rules and regulations.

If you have any questions, please do not hesitate to contact me.

Sincerely,



J. Ashley Cooper

JAC:hmp

cc: (Via Electronic Mail and First-Class Mail)
Alexander W. Knowles, Esquire
Christopher Huber, Esquire
Richard L. Whitt, Esquire
